

Stop the Discrimination of Native Americans

September 20, 2013

→ TO: Ms. Elizabeth K. Appel, Acting Director ←
Office of Regulatory Affairs & Collaborative Action - Indian Affairs

CC: President Obama
Senator Mark Warner
Senator Tim Kaine
Congressman Scott Rigell
United States Senate Committee on Indian Affairs
Congressman Raul M. Grijalva
Congressman Don Young
Congresswoman Colleen Hanabusa
United States House of Representatives Committee on Natural Resources
Representative Markey, Committee on Natural Resources
Lee Fleming, Director of Office of Federal Acknowledgement, BIA
Kevin Washburn, Assistant Secretary - Indian Affairs

Subject: Bureau of Indian Affairs - A Preliminary Discussion Draft (Red Lined PROPOSED Version)
- 25 CFR Part 83 Procedures for Establishing that American Indian Group Exists as an Indian Tribe

Reference: My letter proposing changes to 83.7, dated May 15, 2013, my July 3, 2013 letter, and my August 16, 2013 letters, same subject.

Gentlemen,

Thank you for the opportunity to comment on subject proposed changes, to accomplish BIA and Congress's objective, to simplify (and make clear and reasonable) recognition rules, and provide for a fair and expedited process.

Attached are specific changes we believe should be made to 25 CFR Part 83.7, which should help accomplish this goal; updated from my May 15th letter.

General Recommendations:

1. **Remove all subjective or vague wording such as 'significant', or 'continuously', and also ensure that each requirement is necessary, reasonable, stated clearly, and simplified, with an expedited process.**
2. **Do not utilize percentages anywhere in the document, except for page limitations.** These highly subjective and arbitrary requirements, make it difficult for the petitioner, and difficult for the evaluator. The evaluation process should be like a light switch (easy on and easy off to determine whether a tribe qualifies for recognition, and not require years of production and evaluation).
3. **Eliminate the 1934 date requirement. Only the 1986 date limitation should remain, relating to tribes not existing prior to 1986.**
4. **Provide for an advanced notice of intent** (with 80 days to submit a formal request).

6. We believe **the review and decision process should be moved out of DC and BIA's unilateral control**, and let BIA do what it does best, which is help the recognized tribes. Recommend Item 3, page 2, in my Aug 16th letter.

PLEASE accomplish BIA and Congress's objectives, to simplify, and make clear and reasonable, recognition rules, and provide for a fair and expedited process that does not take tens of years and many thousands of dollars. Please eliminate all of the unnecessary Jim Crow rules and wording, resulting in a clear process that does not drag on for years, and is fair and effective.

Please incorporate the attached recommended changes into subject rules

Please provide a written or email reply to the specifics of my proposal, and what if any will be considered and implemented, as soon as possible.

Respectfully,

A handwritten signature in blue ink, appearing to be 'AT McDaniel', with a long horizontal stroke extending to the right.

AT McDaniel - Tustinuggee Thlocco
828 Boxhill Rd, Va Beach, VA 23464 - zharley.dude@gmail.com
& members of my website, www.JacksonCountyCreeks.org

**ATTACHMENT TO AT McDaniel Letter dated 9/20/2013
(Updated proposed specifics from my May 15, 2013 letter)**

Specific requested changes to Part 83.7 are shown below, with comments and word insertions in **bold**, and ~~strike-through for deleted wording~~.

CHAPTER I: BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

SUBCHAPTER F: TRIBAL GOVERNMENT

PART 83: PROCEDURES FOR ESTABLISHING THAT AN AMERICAN INDIAN GROUP EXISTS AS AN INDIAN TRIBE

83.7 - Mandatory criteria for Federal acknowledgment.

The mandatory criteria are:

>REPLACE "on a substantially continuous basis since 1900" with "prior to 1986".

(a) The petitioner has been identified as an American Indian entity **prior to 1986** ~~on a substantially continuous basis since 1900~~. Evidence that the group's character as an Indian entity has from time to time been denied shall not be considered to be conclusive evidence that this criterion has not been met. Evidence to be relied upon in determining a group's Indian identity may include one or a combination of the following, as well as other evidence of identification by other than the petitioner itself or its members.

>REPLACE "by Federal authorities" with "historical records".

(1) Identification as an Indian entity utilizing **historical records** ~~by Federal authorities~~.

(2) Relationships with State governments based on identification of the group as Indian.

(3) Dealings with a county, parish, or other local government in a relationship based on the group's Indian identity.

(4) Identification as an Indian entity by anthropologists, historians, and/or other scholars.

(5) Identification as an Indian entity in newspapers and books.

(6) Identification as an Indian entity in relationships with Indian tribes or with national, regional, or state Indian organizations.

>ELIMINATE "predominant"; REPLACE "existed" with "were leaders"; REPLACE "community" with "Native American community prior to 1986.", and ELIMINATE REST OF THE SENTENCE.

(b) A ~~predominant~~ portion of the petitioning group comprises of members whose ancestors **were leaders** ~~existed~~ in a distinct ~~community~~ **Native American community prior to 1986.** ~~, and existed as a community from historical times until the present.~~

~~(i) Significant rates of marriage within the group, and/or, as may be culturally required, patterned out-marriages with other Indian populations.~~

~~(ii) Significant social relationships connecting individual members.~~

~~(iii) Significant rates of informal social interaction which exist broadly among the members of a group.~~

~~(iv) A significant degree of shared or cooperative labor or other economic activity among the membership.~~

~~(v) Evidence of strong patterns of discrimination or other social distinctions by non-members.~~

~~(vi) Shared sacred or secular ritual activity encompassing most of the group.~~

~~(vii) Cultural patterns shared with among a significant portion of the group that are different from those of the non-Indian populations with whom it interacts. These patterns must function as more than a symbolic identification of the group as Indian. They may include, but are not limited to, language, kinship organization, or religious beliefs and practices.~~

~~(viii) The persistence of a named, collective Indian identity continuously over a period of more than 50 years, notwithstanding changes in name.~~

~~(ix) A demonstration of historical political influence under the criterion in 83.7(c) shall be evidence for demonstrating historical community.~~

~~(2) A petitioner shall be considered to have provided sufficient evidence of community at a given point in time if evidence is provided to demonstrate any one of the following:~~

~~(i) More than 50 percent of the members reside in a geographical area exclusively or almost exclusively composed of members of the group, and the balance of the group maintains consistent interaction with some members of the community;~~

~~(ii) At least 50 percent of the marriages in the group are between members of the group;~~

~~(iii) At least 50 percent of the group members maintain distinct cultural patterns such as, but not limited to, language, kinship organization, or religious beliefs and practices;~~

~~(iv) There are distinct community social institutions encompassing most of the members, such as kinship organizations, formal or informal economic cooperation, or religious organizations; or~~

~~(v) The group has met the criterion in 83.7(c) using evidence described in 83.7(c)(2).~~

>REPLACE “has maintained political” with “maintains”; and ELIMINATE “as an autonomous entity from historical times until the present”.

(c) The petitioner **maintains** ~~has maintained political~~ influence or authority over its members ~~as an autonomous entity from historical times until the present~~.

(1) This criterion may be demonstrated by some combination of the evidence listed below and/or by other evidence that the petitioner meets the definition of political influence or authority in 83.1.

>MOST UNRECOGNIZED TRIBES ARE STRUGGLING AND DO NOT HAVE SIGNIFICANT RESOURCES.

>REPLACE "significant numbers of" with "most"; AND ELIMINATE "and significant resources from its members". 'Significant' is subjective, and most means more than half.

(i) The group is able to mobilize **most** ~~significant numbers of~~ members ~~and significant resources from its members~~ for group purposes.

(ii) Most of the membership considers issues acted upon or actions taken by group leaders or governing bodies to be of importance.

(iii) There is widespread knowledge, communication and involvement in political processes by most of the group's members.

>ELIMINATE SECTIONS (iv and v).

~~(iv) The group meets the criterion in 83.7(b) at more than a minimal level.~~

~~(v) There are internal conflicts which show controversy over valued group goals, properties, policies, processes and/or decisions.~~

(2) A petitioning group shall be considered to have provided sufficient evidence to demonstrate the exercise of political influence or authority at a given point in time by demonstrating that group leaders and/or other mechanisms exist or existed which:

>INSERT "and" AFTER "land,"; ELIMINATE "and the like on a consistent basis"; AND CHANGE PERIOD "." to a semi-colon. ";".

(i) Allocate group resources such as land, **and** residence rights ~~and the like on a consistent basis~~;

>ELIMINATE "on a regular basis".

(ii) Settle disputes between members or subgroups by mediation or other means ~~on a regular basis~~;

(iii) Exert strong influence on the behavior of individual members, such as the establishment or maintenance of norms and the enforcement of sanctions to direct or control behavior;

ELIMINATE (iv) and (3).

~~(iv) Organize or influence economic subsistence activities among the members, including shared or cooperative labor.~~

(d) A copy of the group's present governing document including its membership criteria. In the absence of a written document, the petitioner must provide a statement describing in full its membership criteria and current governing procedures.

(e) The petitioner's membership consists of individuals who descend from a historical Indian tribe or from historical Indian tribes which combined and functioned as a single autonomous political entity.

(1) Evidence acceptable to the Secretary which can be used for this purpose includes but is not limited to:

(i) Rolls prepared by the Secretary on a descendancy basis for purposes of distributing claims money, providing allotments, or other purposes;

(ii) State, Federal, or other official records or evidence identifying present members or ancestors of present members as being descendants of a historical tribe or tribes that combined and functioned as a single autonomous political entity.

(iii) Church, school, and other similar enrollment records identifying present members or ancestors of present members as being descendants of a historical tribe or tribes that combined and functioned as a single autonomous political entity.

(iv) Affidavits of recognition by tribal elders, leaders, or the tribal governing body identifying present members or ancestors of present members as being descendants of a historical tribe or tribes that combined and functioned as a single autonomous political entity.

(v) Other records or evidence identifying present members or ancestors of present members as being descendants of a historical tribe or tribes that combined and functioned as a single autonomous political entity.

(2) The petitioner must provide an official membership list, separately certified by the group's governing body, of all known current members of the group. This list must include each member's full name (including maiden name), date of birth, and current residential address. The petitioner must also provide a copy of each available former list of members based on the group's own defined criteria, as well as a statement describing the circumstances surrounding the preparation of the current list and, insofar as possible, the circumstances surrounding the preparation of former lists.

>ELIMINATE "throughout history until the present"; ELIMINATE "do not maintain bilateral political relationship with the acknowledged tribe, and that it's members".

(f) The membership of the petitioning group is composed principally of persons who are not members of any acknowledged North American Indian tribe. However, under certain conditions a petitioning group may be acknowledged even if its membership is composed principally of persons whose names have appeared on rolls of, or who have been otherwise associated with, an acknowledged Indian tribe. The conditions are that the group must establish that it has functioned ~~throughout history until the present~~ as a separate and autonomous Indian tribal entity, that its members ~~do not maintain a bilateral political relationship with the acknowledged tribe, and that its members have provided written confirmation of their membership in the petitioning group.~~

(g) Neither the petitioner nor its members are the subject of congressional legislation that has expressly terminated or forbidden the Federal relationship.